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Decline In Individual Liberties and Public Access to Information in the 1980's

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One of the most significant problems we face in the United States today is the decay of First Amendment rights to free speech and free press due to government control of information. This control of information comes in many forms including recent attacks on the Freedom of Information Act, federal restrictions on the free flow of ideas and information involving academic research, FBI abuses of constitutional rights, and other government attempts to monitor and control the thoughts and actions of its citizens. Although these are some of the main examples of the federal government attempting to undermine the liberties which were granted to the citizens in the Constitution and Bill of Rights, they are by no means the only examples.

Freedom of Information

One of the most essential ingredients to a democracy, like the one that was founded here in the United States over 200 years ago, is that if progress is to be made, it must be made by an informed public. Although freedom of information is not specifically cited in the Constitution, it is certainly implied in the basic tenets and language of the document. The freedoms of speech, press, and assembly guarantee that the citizens may speak their minds and freely assemble to discuss ideas, no matter what the nature of those ideas. These liberties bring into play the concept of freedom of the people to know the truth about the conduct of its government so that it can make an informed and objective decision about the future course of that government. The rights to free speech,

press, and assembly mean very little without free access to information by the people. Without the objective and truthful knowledge of what actions the government takes, what do the people really have to speak about, or have a meeting about, or to report about in the press? The denial of and/or falsification of information on the part of the federal government leads to an ignorant and uninformed public which is antithetical to the concept of democracy and of the Constitution.

The kind of government which partakes in this sort of denial of information is a government that runs without public accountability and is one that is far from the idea of a government of the people, for the people, and by the people. In fact, the people are kept in the dark about the conduct of its government. By not releasing information which the public may find unsettling, the government sets itself apart from the masses, becoming a separate entity consisting of a handful of informed ruling elites. This disregard for the democratic system is not at all conducive to a healthy exchange of ideas which can lead to a better understanding of the problems that confront the nation and the possible solutions to those problems. Without a free exchange of ideas, the political process becomes stale and change occurs very slowly, if ever at all. "No government ever shares all its information with its citizens, but a government must be fundamentally open if it is to have any legitimate claim to democracy in this, the 'information age' " (Curry, 69).

Freedom of Information Act (FOIA)

The Freedom of Information Act is the sole legal basis for public access to the records of federal agencies. This right of access is available to all individuals and is enforceable in court, "except to the extent that such records are specifically protected from disclosure." Examples of records that are protected from disclosure include classified information and commercial trade secrets. With the passage of the FOIA in 1966, the people's 'right to know' was established in this country and was further strengthened in 1974 as a result of the Watergate scandal and a sharp rise in public distrust of government. The Watergate incident was the first time that the public was awakened to such a large extent, to the unaccountability of the government and the dangers which can subsequently occur due to it.

The FOIA has been crucial in uncovering a number of publicly unknown facts concerning the activities of the federal government. The usefulness of the FOIA pervades many facets of society and its use by the public and press has led to critical findings in the areas of the environment, nuclear power, health and safety, unsafe products and drugs, intelligence agency abuses, government spending abuses, and foreign policy. (Curry,69). The FOIA has helped uncover a number of important issues in our society including the following:

Example 1: An eleven year Atomic Energy Commission study of cancer rates of 30,000 workers in 'Plutonium City', an atomic bomb facility in

Hanford, Washington, during World War II was publicly disclosed for the first time in 1978. The study was originally shelved after extensive findings directly linked working at 'Plutonium City' with significantly increased cancer rates among workers.

Example 2:: Federal audits of the top ten defense contractors showed that between 1974-1975, these contractors charged the Department of Defense $2 million in lobbying costs and $ 2.5 million in entertainment costs. New Pentagon policies sought to end such abuses.

Example 3: An FOIA request against the Federal Bureau of Investigation revealed secret operations of 'Cointelpro' against the antiwar movement in the United States from 1965 to 1975. Records and documents revealed covert FBI investigation of public interest groups, including Physicians for Social Responsibility.

Example 4: Transcripts and records from a Fertility and Maternal Health Advisory Committee revealed a 1987 Food and Drug Administration deregulation recommendation to delete birth defect warnings form progestational drugs and that the FDA reached its decision using an improperly designed study and ignored authoritative birth defect research.

Example 5: Federal audits of NASA revealed to the public for the first time a history of poor management. These disclosures revealed waste of billions of dollars and agency mismanagement that severely hurt the space program. These mismanagement problems link directly with the

problems that culminated in the Challenger explosion and the deaths of seven astronauts. In 1987 a Pulitzer Prize was given to the New York Times for articles that used the FOIA. (Katz, 52-54).

Reagan Abuses

Despite the fact that the FOIA has proven time and time again to be instrumental in uncovering information which is not only valuable and essential knowledge for an informed public, but has also helped protect and save human lives, the Reagan administration led a concerted effort in the 1980's to undermine the effectiveness of the FOIA. This trend of limiting government accountability and of helping to continue the polarization between government and the people has changed the shape of the FOIA. In the 1980's the Reagan administration called the Act a "highly overrated instrument" and did their best to limit its effectiveness, thereby decreasing the rights of citizens and increasing the government's power to withhold information. Some of the ways in which Reagan attacked the FOIA include the following:

1982: President Reagan's executive order on information classification granted agency officials authority to classify and reclassify records upon review of a FOIA request.

1984: The Defense Authorization Act of 1984 gave the Secretary of Defense authority to withhold DOD technical information form FOIA disclosure.

1986: The Anti-Drug Abuse Act of 1987 was used as vehicle for the passage of the Freedom of Information Reform Act of 1986. These amendments increased the ability of the FBI and other law enforcement agencies to withhold records and gave the OMB new authority to set guidelines and fee schedules for the FOIA.

1987: The Department of Justice issued a memorandum imposing guidelines and requirements for implementation of OMB fee schedule and guidelines.

1987: President Reagan issued an executive order giving corporations increased power to review materials requested for release under FOIA . (Katz, 54-55).

Of the several attempts to undermine the FOIA by the Reagan administration, one of the more blatant of these was S.744, a bill which makes entire categories of government records exempt form the FOIA. Under S.744 "law enforcement records would receive a broader exemption and Secret Service and organized crime information would be completely exempt." (Curry, 70). Moreover, the FOIA would be limited to citizens or permanent legal residents, and those who request information would be charged for the time the agency spends censoring the documents.

A bill such as this one raises many troubling questions concerning the conduct of our government and the motives it might have for passing a bill such as S.744. Although the common government pretext for

limitations of freedom of information has been national security, the exemptions cited in this bill fail to be worthy of being classified as national security matters. Granting broader exemption to information regarding law enforcement can hardly be called a matter of national security. A more likely explanation of why our government does not want its citizens to know the entire truth about its law enforcement agencies is that the public would be shocked and outraged at the reality of the situation. Unethical police conduct such as illegal searches and seizures, illegal wiretapping, and police brutality (such as the recently publicized videotaped beating of a motorist by the Los Angeles Police Department) are most likely what the government is hiding form its citizens.

It seems almost absurd to say that information regarding organized crime is a national security matter. Again, a more plausible explanation might be that the government wishes to keep certain information about its relationship with organized crime a secret in order to avoid an ugly and politically damaging truth. The government's relationship to organized crime has become the discussion of many recent books , articles, and films in regards to CIA/FBI links to well known mafioso such as Sam Giancana during the 1960's.

Other examples of recent attempts to undermine the FOIA include a backdoor amendment which is designed to block public access to unclassified information "concerning all facets of nuclear power, from

production, storage, and transportation of nuclear materials and weapons to the disposal of nuclear waste." (Curry, 71). Although this proposal was met with intense opposition, others have passed easily through legislation. For example, the Reagan administration implemented a policy in which only those nuclear tests which are designated as being 'large' will be announced, as opposed to the previous policy in which all nuclear tests were announced.

One of the most commonly used tactics in undermining the Freedom of Information Act is the use of other stautes to dilute the FOIA. This method was used in 1986 when amendments to the FOIA were passed as a part of the comprehensive drug control legislation. This tactic of attempting to limit the powers of the FOIA through the passing of another piece of legislation is so highly effective because such so called 'omnibus' legislation carries immense political momentum, and new provisions can easily be added. The use of such amendments by conservative members of Congress and by the Justice Department point to a concerted effort to strengthen government control of information and to weaken the Freedom of Information Act. Senator Orrin Hatch, Republican of Utah, was quoted as saying that the changes "considerably enhance the ability of Federal law enforcement agencies such as the FBI and the DEA, and greatly enhance the ability of all Federal law enforcement agencies to withhold additional law enforcement information." (Katz,56).

Greater secrecy for agencies like the FBI and the DEA means less accountability to the public and greater room for abuse of power. The system of checks and balances that the American government was founded on, does not apply only to the relationship between the three main branches. The system must also exist between agencies of the government, on the one hand, and the press and public on the other. If the agencies in question were allowed to review and check themselves much as they do now, corruption, illegal methods, and abuse of power would be unguarded against and therefore would be more widespread.

National Security

Although it has proven time and time again to be a beneficial ingredient to a new technologically advanced age of democracy, the FOIA has been undergone steady attack by the Reagan administration. The rationale of undermining the FOIA , and consequently the First Amendment, by the government has been its claim to maintaining national security. The framers of our Constitution seemed to understand that claims of national security could be used to erode the civil liberties by accusing opponents of the government of "working under the direction or control of foreign power hostile to the U.S." They tried to guard against this type of abuse in Article 2, sec. 3 of the Constitution which states: "Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort." (Dorsen, 281).

The definition and justification for national security, one of the most purposely vague and frequently used terms concerning public right to access information, must be determined by the people of the United States in order for an informed debate to take place and for greater government accountability. National security has too often become the justification for government secrecy. The widespread use of the term by the government has placed a stigma on it, almost to the point that questioning the significance and meaning of 'national security' is seen as somehow unpatriotic. This supposed stigma, along with the complex nature of defining the term, often allows it to go unnoticed and unchecked resulting in a more widespread use of the term by the government. The end result is an uninformed public, who does not have sufficient access to information to make decisions about the course of its government. This is consequently contrary to the democratic values upon which the nation is founded.

After extensive research I believe that there are a number of areas in which the federal government can and does claim to have national security interests at stake, and therefore need to keep information on certain topics confidential. Among these areas should be weapons technology and deployment (excluding nuclear testing announcements), diplomatic negotiations, intelligence methods and sources, and military contingency plans. These topics fall under the realm of international affairs and can be justified as national security concerns in which public

release of information may be damaging to the security of the United States. In the domestic arena there are fewer areas in which the government has a legitimate claim to national security. These should be limited to personal data given the government on the presumption it would be kept confidential such as tax returns, and personnel investigations. Also, official decisions that , "if prematurely disclosed would lead to speculation in land or commodities, preemptive buying, higher governmental costs and private enrichment." (Schlesinger).

Contemporary American governments; the Reagan administration in particular; have abused the term national security to the point where it has lost all practical meaning. The term has been used as a tool to maintain secrecy of government information not only from unfriendly foreign governments, but from the Congress, the press, and the American people. The term national security has been reduced in recent years to being a tool used to cover up embarrassments and crimes committed by the ruling regimes. The list of areas in which recent administrations have used national security as a pretext to justify excessive secrecy is quite long:

-information classification and reclassification

-unprecedented classified defense and intelligence spending

-secrecy contracts and lifetime censorship of some government employees

-toughening of information access laws for the public

-reducing of publication and dissemination of government information

-restricting of scientific and academic freedom

-ideological censorship of foreign visitors

In motions filed in 1984 the government went so far as to claim that it is immune from suit for any actions committed in the name of national security, even if those actions are illegal or unconstitutional and that the courts have no jurisdiction to hear cases involving national security matters. Even if one grants a relatively large amount of leeway to the government in its attempt to maintain what it considers to be national security, there must exist some judicial body which has jurisdiction to hear cases in which national security is claimed to be at risk. If the arguments of the government are successful there will no longer exist any agency which determines whether national security is truly at risk. The result is no accountability to the Constitution by the government when the simple claim of national security is made, and the rights of the citizens are violated.

Classification

One of the most frightening aspects of the recent attacks on the Freedom of Information Act is the fact that there had been a trend towards more open access to information by the public during the Carter administration, which was reversed by the Reagan administration. With Executive Order 12356, Reagan removed the need to show 'identifiable damage' to national security through the release of information and

eliminated Carter's practice of balancing the public's right to know against the potential harm to national security. Furthermore, "it lengthened the duration of classification, and eliminated the automatic declassification of documents after twenty or thirty years and empowered agencies to reclassify and recall previously declassified documents." (Curry, 72). With this executive order President Reagan essentially gave a blank check to the government in classifying documents and keeping them from the citizens of the United States. The result of such an order is to make the government still further unaccountable for its actions, increasing the distance between the people and the government. In this manner it is easier for the government to carry out its objectives without having to deal with the troublesome objections of the press and of ordinary citizens. By denying the people access to vital information, the U.S. government is committing a grave hypocrisy concerning the very lifeline of its existence, namely the Constitution and the Bill of Rights, while it adds to the increasing polarization of the federal government and its citizens.

The practice of classifying government documents, information, and records is one of the most commonly used methods of achieving government secrecy in America. This practice originated in the 1800's in the military and has grown steadily to include almost every facet of the federal government. By its technical definition, information classification is an internal government system created by the executive order of the

President, restricting federal employees to access to information strictly on a need to know basis. In recent years the trend toward greater openness of classification policy has been reversed by the Reagan administration and upheld by the Bush administration. The Reagan policies marked a return to classification policy of indefinite scope, unreviewable authority, and decreased accountability in the executive branch.

One of the most dangerous components of the classification increases during the Reagan era was the President's expansion of the criteria used for classification. Before Reagan entered office, the classification policy had addressed the tendency towards overclassification partly by identifying specific categories of information subject to classification. Earlier orders based classification on the potential damage that could result from disclosure. Mr. Reagan added three new categories and modified an existing one. (Hernon, 122).

Reagan also widened the discretionary authority for classification. Under the executive order issued by President Carter, the policy had been essentially; when in doubt, don't classify. Under Reagan the order was reversed to when in doubt, do classify. This emphasis on classification has allowed low-level officials to continually increase the volume of classified information. Although these increases are subject to higher review, the volume of documents has become unmanageable, review is delayed and the result is overclassification. (Hernon,154).

In another move to further the classification of documents, President Reagan reversed a trend that began with President Kennedy of maintaining a system and schedule for automatically downgrading and declassifying information after a certain period of time. A declassification system is of particular importance to conducting reliable historical research. In order to fully understand the relationships and the events which occurred between different people and institutions in history, a historian needs a broad array of information from a wide variety of sources. Without an accurate portrayal of history the citizens are left with a false view of past government policies and accomplishments. "The ideal declassification process for historical research is the very kind of orderly declassification which" the Reagan executive order eliminates. (Katz,23).

Instead of a systematic declassification schedule and system, the Reagan administration order limits "systematic" review to such departments as the National Archives, which has little control over information of timely importance in areas such as health, safety, or the environment. Also, mandatory review leading to declassification only occurs at an outside request for information and holds a great deal of information exempt from declassification. These exemptions include information "originated by a President, White House staff, by committees, commissions, or boards appointed by the President, or others specifically providing advice or council to a President or action on behalf of a

President." (Katz, 23). In other words, almost anything related to the President's actions would be exempt including, in the case of Reagan, the work of the Tower Commission which was created by the President to probe the Iran Contra scandal.

Reclassification

President Reagan is the first President to authorize the reclassification of previously released information. Previous administrations had strict prohibitions against reclassification. The Reagan order permits reclassification of information that has already been declassified and released to the public if it is determined in writing that 1.) information requires protection in the interest of national security and 2.) the information "may reasonably be recovered".

Reclassification is a reflection of the power and attitude of the government as well as a reflection of the tension between national security and the First Amendment. The government argues that the authority to reclassify must exist where declassification mistakes have been made or where sudden shifts in international events may make previously released information suddenly sensitive again.

With these kind of broad claims to secrecy, the government is essentially censoring its citizens. Although certain documents have been declassified and are now in the public domain, the government is telling the public that it may no longer have access to these documents. This attempt to censor history and to arbitrarily recall documents which may

have already been widely viewed by the public, is a clear violation of constitutional rights, as well as a clear limitation to public access, and subsequently a hindrance to free, unhindered public debate.

One example of the reclassification order occurred in 1982 when the National Security Agency attempted and succeeded in reclassifying material held in the library of a private educational institution. The library holds many private papers of former federal officials once involved prominently in national defense. Although the NSA had previously not only reviewed the documents for release, but also provided for "secure shipment of the collection to safeguard the materials and facilitate the intransit insurance arrangements." Some of the material concerning the subject of cryptology was used by James Banford in his book "The Puzzle Palace". Subsequently the NSA visited the library and demanded the removal of 33 key documents from public availability. The action was challenged in court, and the court upheld the NSA action on the grounds of national security, but failed to address the question of 'reasonable recovery', which was unlikely after the publication of thousands of copies of "The Puzzle Palace". (Dorsen, 134-6).

The overclassification of information, and the lack of accountability on the part of the government are all abuses that occur due to the loose and ambiguous use of the phrase national security. Although Congressional and public support are both essential ingredients in our democratic system, both of these groups have been low on the list of

executive branch priorities in recent years. The citizens of the United States are given the lowest priority of those who 'need to know'. The President is ultimately responsible for excessive government secrecy, but he is too often unaccountable for the abuses of power due to lack of access to information on the part of Congress and the people. The abuse of the concept of national security has significantly decreased the importance of the term, made the line between national security and the public's right to know incomprehensible, and has helped greatly to contribute to the growing gap between the government and the masses of people whom it was chosen to represent. Without an informed and aware public, the citizens are kept ignorant of the true nature of their government's actions. Without truthful knowledge as to the government's conduct, citizens cannot make an educated judgement as to what the status and direction of their elected officials should be. This practice is clearly undemocratic and needs to be reformed so that the people may reaffirm their commitment to a representative form of government in which they can more easily place their trust.

Fee Waivers

The cost of government information to the public is another tactic used to deny public access to government information. Among the concerns regarding the Office of Management and Budget's(OMB) fee schedule and guidelines are the new definitions that have been set of the terms "news media", "educational institution", and "commercial use".

The new guidelines set by OMB allow the agencies in question to evaluate the news value of information themselves even though Congress specifically rewrote part of the law, in order to remove agencies form making such decisions themselves. New guidelines under President Carter ordered federal agencies to release information requested under the FOIA, unless it clearly fell within one of the 9 exemptions to the rule "The new guidelines offered Justice Department legal support to agencies refusing to release information, unless the requester clearly had a right to the information, shifting the burden of proof to the requester, who often does not have access to the information needed to justify release." (Curry, 81).

In 1983 the Justice Department issued a fee waiver policy which "provides for free release of information that would benefit the public interest, but the new policy lays out five criteria not contained in the act which substantially recuce the possibility of obtaining fee waivers for most requesters." (Curry, 87).

1.) Material sought must already be the subject of "genuine public interest"

The problem here is that it is quite difficult to have genuine public interest without disclosure of crucial information.

2.)It must "meaningfully contribute to the public development of understanding of the subject". The definition of the term 'meaningful' is unclear.

3.) The requester must have the qualifications to understand and evaluate the materials and the ability to interpret and disseminate information to the public. According to this clause an average citizen therefore may not have access for his own personal knowledge of the actions of his government. This is an arrogant clause aimed at discouragement.

4.) The agency must make "an assessment, based upon information provided by the requester, as well as information independently available to the agency, of any personal interest to the agency. "

5.) If requested information is already in 'public domain' such as the agency's reading room in Washington D.C., there will be no fee waiver granted. (Dorsen, 137).

The result of these conditions on fee waivers for information, is an apparent attempt to deny fee waivers, and to consequently deny access to information by making the process so difficult and expensive so as to discourage the request of and obtainment of the information. This tactic is often used in government policy to help maintain the status quo through secrecy, confusion, and bureaucratic red tape. By discouraging the request for information the government is abusing its Constitutionally granted powers and is working against, rather than with, the forces that seek free information in order to arrive at an objective truth.

The new guidelines for fee waiver adopted by the OMB are dangerous to individual rights for a number of reasons. The term

'educational institution' has been defined in such a way that it hinders academic and scientific research that may be reliant on government information. The vague definitions set by the OMB have been used many times to deny fee waivers for educational research. One of the most troubling aspects of this development is the power that is held by low level government officials in determining what is and is not in the public's interest. For example, the Air Force recently denied a fee waiver to a professor doing research on U.S. involvement in Southeast Asia saying the following:

"We do not believe that there is a genuine public interest in the documents you have requested. Secondly, we seriously question the value to the public of these records. Since there have been voluminous books and studies previously published on Southeast Asia, we do not feel the records will meaningfully contribute to the public development or understanding of the subject. The value at best may be marginal." (Katz, 57).

The term 'commercial use' has also been distorted by the new OMB guidelines and results in more difficulty in obtaining fee waivers for information sought under the FOIA. For example, the planned sale of a report, book, or booklet based on information sought in a FOIA request will taint it as a 'commercial use' and make invalid the possibility of a fee waiver. In another case, one government agency even claims that a professor's teaching salary constitutes 'commercial use', thereby denying

the use of a fee waiver. The Department of the Air Force recently denied a fee waiver to a college professor stating that:

"The fact that you intend to use the information in your college classes is not a relevant factor because as a college professor you are paid a salary and, therefore would derive monetary benefit from the information requested." (Katz, 57).

Furthermore, the guidelines specifically exclude students or interested parties not affiliated with an educational institution, from qualifying for a fee waiver. It seems clear after studying the language and intent of the new guidelines and various rules associated with the FOIA, that the government of the United States does not wish the Act to be used readily and regularly. With the provisions for fee waivers and the strict guidelines for the release of information that may be crucial to public knowledge; it would be safe to call the procedures elitist in nature and fundamentally opposed to the idea of free and open information to the public of documents that do not constitute 'national security', even with the government's broad use of the term. Why would the Reagan administration go to such lengths to make use of the FOIA so difficult and burdensome? The government realizes that secrecy is an excellent source of power and is essential to a government that wishes to hide certain embarrassments, mistakes, and most of all, illegal acts committed. A government that was of the people, and for the people would be very willing to make public, documents and information requested, as long as

it did not pose a legitimate conflict with national security. A government that had interests of its own, such as Reagan's, would make it difficult, and in many cases impossible to access information that would be damaging to those interests.

In accordance with the principles of democracy, the burden of proof should be on the government to show that the information requested is of vital security interest and cannot be divulged to the public. Although the power of the government to maintain certain secrets for the sake national security is without a doubt important to a modern democracy, this power must also be regarded as highly dangerous to those being governed. What is at stake is the issue of accountability, lest the government's legitimate claims to power turn into a tyranny which cannot be checked by the people because the people are being denied access to complete and accurate information concerning the conduct of their elected officials and bureaucratic structure.

Government Employee Controls

The last twelve years have seen unprecedented attacks on the individual liberties of American citizens by their own government, which I have been discussing previously. One of these attacks has occurred in the area of information security as it relates to federal employees. In addition to issuing a restrictive information classification policy discussed above, another more visible policy was implemented since the beginning of the Reagan administration to control the communications of

government employees to the outside world. Some of these controls include imposing secrecy agreements, lifetime prepublication review, controls on press contracts, and polygraph testing of employees. The governement's expansion of control over employees has been encouraged by an increasingly conservative Supreme Court.

Of all the secrecy orders announced while Mr. Reagan was in office, none evoked as much opposition as the National Security Decision Directive 84 (NSDD 84). This directive made it mandatory for current and former government employees to sign lifetime secrecy contracts forbidding the disclosure of classified and classifiable information. The contracts which were signed by approximately three and a half million people as of December 1989, serve as nothing more than gag orders, severely limiting congressional and public access to vital information and reducing the advisory capacity of Congress. Successive efforts by Congress to halt this practice have been unsuccessful. (Article 19, 137).

Specifically, NSDD 84 imposed four new requirements:

1.) All federal employees with access to classified infromation must sign a nondisclosure agreement, pledging never to disclose classified information to which they had access.

2.) Federal employees whose work involves intelligence-related special access programs, "Sensitive Compartmented Information", must sign a contract pledging lifetime prepublication review.

Nondisclosure Agreements

The nondisclosure agreements required by NSDD 84 demonstrate the unlimited breadth and power of government controls on communication in our society. In 1987 Congress called upon President Reagan to withdraw the nondisclosure agreement citing serious Constitutional problems with the directive. Due to the restrictions on free speech there are obvious conflicts with the First Amendment as well as an "impermissible burden on the right to petition the government." Also it is believed that the agreements conflict with laws referred to as 'whistle blower' laws, which give government employees the right to cite "mismanagement, a gross waste of funds, an abuse of authority, a substantial and specific danger to public health or safety or illegality." (Demac,65).

Furthermore, there are questions about the vague and indefinite standard of what could be seen as "classifiable information" which gives the government almost unlimited control since it is the President who sets the definition of classified information and who can declassify and reclassify information almost at will. Essentially, the term 'classifiable' refers to the government's power to classify information whenever a "query or request for the information has been made." (Dorsen, 215).

Prepublication review requirements on government workers were also widened in the 1980's. This practice, which boils down to a lifetime censorship contract, has been signed by hundreds of thousands of

government employees. Not only do the prepublication review requirements pose important constitutional questions, they also attempt to limit the ways in which American citizens can learn about the true workings of their government.

The effects of prepublication review include its potential impact on cabinet officials of every administration. The results of these reviews will be that books and articles written about their experience and issues to which their experience lends valuable insight will be subject to censorship by the government.

The impact of this kind of restraint was illustrated in Congressional hearings concerning NSDD 84. There, the chairman of Time Inc. listed the books and articles by former senior officials that would have to undergo government censorship. The list included books and magazine articles by three Presidents, a Joint Chief of Staff, three secretaries of state, a director of Central Intelligence, and a number of important aides.

These types of restraints are highly dangerous to a modern democratic society. They hinder the publication of truthful and uncensored information by those who have the greatest insight into how the government actually functions. These individuals have the most to contribute to the general understanding of the intricacies of government and can provide invaluable suggestions and solutions to problems . If the government does not allow free expression by these individuals, then it is severely limiting our scope of knowledge and understanding. If we

do not allow the value of experience to contribute to our understanding of the future we act in an archaic fashion, shielding ourselves from the truth. By limiting what former government officials can or cannot say the government may be contributing to problems and ignoring possible solutions.

Restricting Scientific and Academic Research

One of the most treacherous trends in the U.S. government policy concerning individual liberties, and public access to information has been in the area of scientific and academic research. Once again, a line needs to be drawn between what is considered national security and Constitutional liberties and concerns. The information that is increasingly subject to secrecy controls is not classified information, and it is not even government owned. Instead, the vague and ambiguous concept of national security is used "to restrict scientific communication, attendance at professional conferences, enrollment in university classes, access to university laboratories and computers, access to computerized information, and the ability of foreign intellectuals to come to the United States." (Katz, 42).

The following is a brief chronology of government interference in the realm of scientific and academic research and communication which is so vital to the advancement of a society:

1982: U.S. Customs officials seized a shipment of computer science textbooks which a U.S. professional society was shipping to Japan.

1982: U.S. Customs officials confiscated the luggage of five visiting Chinese scholars, removing scientific journals, classroom notebooks, thesis and lecture materials, slides, innocuous computer software, and rock music cassettes.

1984: Department of Defense and NASA jointly sponsored a professional conference with the American Ceramics Society on composite materials but restricted attendance to "U.S. citizens only".

1984: The Society for the Advancement of material and Process Engineering closed conference sessions on metal matrix and carbon-carbon to non-U.S. citizens. About 20 percent of the Society's 5,000 members are foreign nationals.

1987: President Reagan and the Department of Energy barred foreign officials from attending a national conference on superconductor technology. (Katz, 39).

Since the start of the Reagan era, the federal government has accelerated its efforts to control public access to computerized information. This information is neither classified nor is it government property. Accordingly, there are serious questions as to the government's right to monitor this type of information. Once again the conflict of interest exists between balancing legitimate concerns over national security and protecting the freedoms of all concerned. Given the trends of the Reagan era, it is no surprise that the government's control of

telecommunications and computerized information has been increased and the mechanisms to do so are also more secretive.

In 1984 Reagan issued National Security Directive 145, which helped to extend the boundaries of government control to new limits. Speaking abut NSDD 145, former National Security Advisor John Poindexter stated that the scope of "sensitive, but unclassified information" that would now come under government control include: "Other government interests...related to but not limited to the wide range of government or government derived economic, human, financial, industrial, agricultural, technological, and law enforcement information, as well as the privacy or confidentiality of personal or commercial proprietary information provided to the U.S. by its citizens." (Katz, 41).

In the academic world, many colleges and universities have felt the impact of new restrictions. In recent years there has been prepublication review contracts, controls on foreign scholars, course enrollment by foreign students and their computer access, and immigration restrictions on foreign visitors. Although there may be questions of national security in certain isolated cases, it is quite difficult to prove in the majority of instances.

The prepublication review policies originally implemented in NSDD 84, are said to be relevant to university researchers because certain research grants are government sponsored. The practice of using prepublication review in science-related government grants has

led to a trend in other government sponsored university grants in areas that have absolutely nothing to do with military technology, intelligence, or any classified information.

The practice of prepublication review is dangerous for a number of reasons. First, government censorship of any kind is bound to sterilize debate to only those topic that are approved by the government. This greatly decreases the essential value of universities as a tool for exploring and discussing all ideas, options, and advancements available. Secondly, the government can simply censor any discussion of information which may be politically damaging by deciding that certain information should never be published. Lastly, former government officials who wish to pursue an academic career in the area of government in which they have worked could be prevented from doing so.

As an example of the types of research that the government has required for prepublication review is the following list from a report by Harvard University. Note how far a stretch of the imagination one would have to make in order to consider these topics to be of national security interest.

-Department of Housing and Urban Development: "Study on Changing Economic Conditions in Cities."

-Health Resources and Sciences Administration: "Workshop for Staff of Geriatric Education Centers"

-National Institute For Education: "Education and Technology Centers"
-National Institutes of Health: "International Comparison of Health Science Policies" (Katz, 43).

When the government of the United States imposes restrictions on the academic, scientific, and intellectual freedom of its citizens, then there is a serious problem with democracy in the United States. It is essential to the preservation of a democratic society that a free exchange of ideas and information exist. By repressing or censoring such a free exchange of ideas, progress is seriously thwarted and the solutions to problems might be overlooked and ignored. The academic world is essential to independent thinking and debate. Once we begin censoring this area, the very basis of our advancement as a society slows to a halt. It seems almost useless to continue sending our young to such institutions of higher learning if they cannot fulfill the promise of discovering and implementing new ideas and new solutions through free discussion and debate. Efforts to stop the publication or presentation of certain pieces of academic or scientific work are diametrically opposed to the First Amendment of the Constitution, especially when the information in these papers are neither classified nor government property. Americans have the First Amendment right to decide for themselves the merit of a persons ideas and activities without the federal government stepping in to cover our ears from the words of a visiting scholar.

Federal Bureau of Investigation

Like many other issues concerning the individual liberties of American citizens, the people's relationship with the Federal Bureau of Investigation is one in which a balance must exist between the governments security interests and the civil liberties of Americans. In recent years the people have been losing certain First Amendment rights entitled to them by the Constitution and the Bill of Rights, while the FBI's authority to pry into the affairs of law abiding citizens has increased significantly.

The government conducts domestic investigations against groups or individuals who use violence or other unlawful means to obtain their political or personal objectives. This use of domestic surveillance must be acceptable to a society who believes that truth or concensus gained through a free exchange of ideas and free and open elections. If people in the country obtained their political aims through violence we would live in complete anarchy,with everyone from militant racist groups to local governments achieving their goals through violence or other unlawful activity.

The problem arises when domestic security investigations lose their real purpose and infringe upon the rights of individuals or groups. "Unlike ordinary criminal investigations, which are ordinarily confined to determining who committed particular acts and terminate with the decision to prosecute or not to prosecute domestic security investigations attempt to forestall future crimes and to gather information

about the size, composition, goals, and techniques of political organizations that may not have engaged in any past criminal activity." (Halpern, 172). This type of domestic security investigation often forces government officials to draw the fine line between subversive groups and political dissidents. Unfortunately, this line is too easily crossed by the FBI in many cases and individuals and groups whose vies might be considered radical are investigated for their political beliefs. This line between subversion and dissent must be drawn more clearly and must be adhered to by government agencies in order for democratic principles and individual rights such as freedom of speech, assembly, and association to be preserved.

Brief History

When the FBI first began it was amidst strong Congressional disapproval due to the view that such an agency would be contradictory to the democratic principles of government. But the agency was formed nonetheless in 1908 during a Congressional recess. In the beginning it used its power mainly to enforce the Mann Act, but quickly began to investigate radical and subversive activities. During the 1920's and 30's the FBI engaged in investigations of anarchists, communists, and other general subversives. In the 1950's J. Edgar Hoover broadened the scope of the FBI's power by going against Supreme Court laws which restricted the bureau's COINTELPRO activities which were designed to " expose, disrupt, and otherwise neutralize dissident organizations and

individuals." The powers of the FBI reached alarming proportions during the Red Scare of the McCarthy era and Nixon's Alger Hiss episode. (Curry, 275-276).

Levi Guidelines

In 1976 there were new and restrictive guidelines set by Attorney General Edward Levi, as to the scope and nature of FBI domestic security investigations. The intent of the Levi guidelines was to focus FBI investigations on possible criminal activity and to prevent the FBI from investigating political subversives and dissidents who were lawfully exercising their Constitutional rights. Levi specified that domestic security investigations could only be conducted to obtain information on groups or individuals who might violate federal laws by using force or violence.

The Levi guidelines established clear rules for domestic security investigations and formed three levels of investigation; preliminary, limited, and full investigations. Preliminary investigations could be started "on the basis of allegations or other information that an individual or group may be engaged in unlawful activities which involve or will involve the use of force or violence. " The preliminary investigations were confined to "determining whether there is a factual basis for opening a full investigation." In this sort of investigation, the FBI was limited to using only already existing information and public sources. (Curry, 276).

The limited investigation was only to have taken place in the case that the preliminary stage was found "inadequate to determine if there is a factual basis for a full investigation." In addition to the use of public sources, on this level of the investigation the use of techniques such as physical surveillance and personal interviews were authorized, but other more intrusive methods of obtaining information such as mail covers, electronic surveillance and the use of informants were prohibited. (Curry,277).

The final level of domestic surveillance under the Levi guidelines was the full investigation. These investigations were authorized "only on the basis of specific and articuable facts giving reason to believe that an individual or a group may be engaged in unlawful activities which involve the use of force or violence." The guidelines also specified that the FBI must consider the "magnitude of the threatened harm", "the likelihood that it will occur", the "immediacy of the threat", and " the danger to privacy and free expression posed by a full investigation."

The Levi guidelines were a clear definition of the FBI's role in and handling of domestic security investigations The introduction of these guidelines brought about a dramatic reduction in the number of domestic security investigations from 4,868 conducted in 1976 to only 26 conducted in 1981. These guidelines were an important safeguard for citizens. They held that there must be specific evidence of a real threat of force or violence before the government can spy on its citizens. In a

democratic society the free and open exchange of all ideas and views, no matter how radical they may be is a key to the survival of the democracy. The people must be free to go about discussing their political and social beliefs, and must be free to associate and assemble with whoever they please without interference from government authorities who claim subversion. Only in this manner will the society guard itself from becoming stagnant and conservative in nature.

Smith Guidelines

Like so many other guarantees to civil liberties the Levi guidelines came under severe attack by conservative Congressmen and finally and inevitably by the Reagan administration in the early 1980's. The argument went to the affect that we need to place the FBI above the law so that it can sniff out terrorist activities which are so subtly conducted through legitimate means. Eventually in 1983, Attorney General William French Smith introduced a new set of guidelines that has been described as an "evolutionary process" in the role of the FBI in domestic security investigations. Unfortunately for the American people this 'evolutionary process' consists of a broadening of the scope of FBI powers and a decline in the First Amendment rights of American citizens. The Smith guidelines can be summarized as follows:

1. Elimination of preliminary and limited domestic security investigations instigated in the Levi guidelines.

2. Full investigations are authorized whenever the "facts or circumstances reasonably indicate that two or more persons are engaged in an enterprise for the purpose of furthering political or social goals wholly or in part through activities that involve force or violence." The "'specific and articuable facts" requirement of the Levi guidelines has been eliminated and replaced with the ambiguous phrasing "reasonably indicate".

3. Extend the 'enterprise concept', which allows the FBI to investigate groups that "knowingly support" the criminal objectives of a violent group but do not themselves engage in criminal activity, to domestic surveillance investigations.

4. Authorize the FBI to continue to monitor organizations who have ceased violent activity and are currently inactive.

5. When an organization advocates criminal activity an investigation is warranted even if no formal laws were broken. (Curry, 278-9).

There are a number of problems with the Smith guidelines in which the potential for abuse is heightened. The second rule authorizing full investigations is inadequate as a safeguard with its ambiguous phrasing of "reasonably indicate." This rule suggests that he mere advocacy of ideas is enough to warrant a full investigation. While the possibility of danger may exist, this kind of emphasis on investigations instigated by radical dogma leaves the door open for potential abuse by

the FBI. The FBI must limit itself to investigating crime and must never involve itself in investigating a belief.

Similarly, the third rule applying the enterprise concept to domestic security investigations, leaves the door open for investigating law abiding individuals or groups who may by exercising their constitutional right to give "financial support, legal assistance, or other aid" to certain target organizations.

Perhaps the most disturbing aspect of the Smith guidelines is the fourth rule in which the FBI can now continue its investigations of inactive organizations. This leaves room for the classic never-ending investigations that have characterized the root of the FBI's problems in the past. This type of investigation can easily turn into government harassment of political dissidents.

Constitutionally, it could be argued that the FBI's investigations do not defy the First Amendment rights to freedom of expression and association. But it could also strongly be argued that these types of investigations do violate the intent of the Constitution and the individual's implicit right to privacy. The Supreme Court upholds this view of the conflict and has held in a series of cases that disclosure of membership in political organizations can itself violated the First Amendment. For example, in the case of NAACP v. Alabama, the court invalidated a law requiring all out of state corporations who wished to do business in Alabama to turn over certain information, including the names and

addresses of its members. "The court concluded that, in the circumstances of the South in the 1950's, the disclosure of such information could have a substantial deterrent effect on the willingness of individuals to exercise their constitutional right to join and support the NAACP." (Curry, 281).

The Court recognized that disclosures of this sort 'can seriously infringe on privacy of association and belief ' Furthermore, the Court has noted in the past that "inviolability of privacy in group association, may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs. (Curry. 280).

Overall, domestic security investigations by the FBI arouse serious concerns over First Amendment rights because they are targeted only at some organizations, not all of them. This brings up questions of discrimination and persecution due to ones political beliefs, an inherent contradiction of constitutional safeguards to freedom of speech, assembly, and association. Other practices used by the FBI, that are not specifically cited in the Smith guidelines, but are not in accordance with the language and intent of constitutional guarantees to privacy are the use of informants. Under the current guidelines the FBI may employ informers in domestic security investigations if there is a "reasonable indication" that the organization may engage in unlawful conduct. Informers pose serious threats to the freedom of association so essential

to a healthy democracy. If an informer is even suspected to be among the members of an organization, the group members right to speak freely is seriously threatened. Presently the rules and guidelines concerning the use of informants are far too loose. The use of informants by the FBI should be subject to the same rules which apply to FBI wiretaps which must be authorized by a judicial warrant premised upon a finding of probable cause.

Library Awareness Program

Probably the best recent example of the growing challenge to constitutional freedoms and the people's right to know is the FBI's Library Awareness Program. The Library Awareness Program is the FBI's most extensive and notorious attempt to restrict access of information. The program is unique in its attempt to recruit librarians as counterintelligence agents to monitor suspicious library users and report their habits to the FBI. The goal of the Library Awareness Program is to monitor the users of library material in an attempt to 1.) keep foreigners away from certain information termed as "sensitive but unclassified". 2..) to control "commercially valuable" information. The American Library Association and other groups in the library profession have made it clear that they oppose this type of surveillance. C. James Schmidt of the ALA has described the program as "part of a systemized, coordinated inter-agency effort to prevent access to unclassified information". (Forestel, 10).

In 1987 the increasing practice of FBI agents visiting libraries and requesting the names and reading habits of users, particularly foreign nationals became public in a New York Times article that described an FBI visit to Colombia University in June of that year. Paula Kaufman, the director of Academic Information Services at Colombia stated to the New York Times that "they (FBI) explained they were doing a general 'library awareness' program in the city and that they were asking librarians to be alert to the use of their libraries by persons from countries hostile to the United States, such as the Soviet Union and to provide the FBI with information about these activities". (Forestel, 11).

As is to be expected, when confronted with opposition to its Library Awareness Program, the FBI hid behind the veil of national security. FBI Assistant Director Milt Ahlerich stated: "We have programs wherein we alert those in certain fields of the possibility of members of hostile countries or their agents attempting to gain access to information that could be potentially harmful to our national security." (Forestel,11). After much opposition by library associations across the country and by a handful of Congressmen, the National Security Archive, the Washington based library and research center, submitted a Freedom of Information Act request seeking all documents relevant to the Library Awareness Program. On August 21, 1987 the FBI responded that there were no records relevant to the request. After further confusing and contradictory information on the part of the FBI, the National Security Archive filed a

lawsuit arguing that the requested FBI documents were being denied without legal justification and asked the court to order their release. (Forestal, 13).

Finally, in July 1988 after the FBI had twice denied that any such program even existed, they released thirty seven pages of heavily censored and deleted information to the National Security Archive describing counterintelligence activities by the Bureau's New York office in city libraries. There was no mention of the term Library Awareness Program anywhere in the documents, but there were frequent references to a "Bureau -approved code name". The documents show that FBI headquarters thought it impractical but not inappropriate to prevent all Soviet access to unclassified and unrestricted material. In fact, this view of information control remains the FBI's attitude towards denying unclassified information to Soviet citizens or even to American citizens who are defined as somehow undesirable. (Forestel, 120).

The FBI's Library Awareness Program has posed a serious threat to "the right of American libraries to freely communicate the unclassified information in their collections and the right of Americans and foreign nationals to really inquire after that information." (Forestel, 121). The fight against the Library Awareness Program has been long and fruitless. Challenging the program on the basis of freedom of speech and inquiry has not been successful due to the functioning of the courts. For example, if the government claims that its program was initiated for the

purpose of enforcing the criminal laws preventing espionage, "any incidental suppression of speech results from governmental efforts to achieve that other purpose will not violate the First Amendment , unless these government efforts are 'wholly gratuitous' . Where the government purpose is to suppress speech, courts can easily claim a violation of the First Amendment, but the chances of the government admitting to suppressing speech are slim. In most cases courts tend to uphold official activities in support of legitimate government goals, such as counterespionage even if they happen to infringe on the rights of individuals.

Much of this debate centers around the right to privacy. Although the word itself does not appear in the Constitution, the right to privacy is certainly implicit in the Bill of Rights. For example, the First Amendment guards individual freedom of expression, religion, and association. The Third, Fourth, and Fifth Amendments forbid unwarranted governmental intrusion into the private persons, homes, and possessions of individual citizens. The Ninth Amendment expressly reserves to the people, rights that are not enumerated in the Constitution. It would be consistent with the nature of the document to include the right to privacy. Finally, the Fourteenth Amendment guarantees a citizens right to life, liberty, and property without due process of law, which is an additional safeguard against governmental intrusion into personal privacy.

The Library Awareness Program is a very real example of the continued loss of privacy and individual liberties of the people as a result of governmental intrusion. A library user's right to read, inquire, and learn free from outside control or surveillance is basic to the democratic system of government. When government steps in to collect personal information on library users, the individuals right to privacy is seriously curtailed. Libraries protect user privacy by maintaining the confidentiality of personally identifiable information in library systems. Sadly enough it is increasingly becoming the fact that this confidentiality needs to be protected from government.

In a society where freedom of information is an essential basis form making informed judgements, it is a frightening fact that virtually every document significant to the Library Awareness Program of the FBI had to be obtained through the Freedom of Information Act. In 1989 the National Security Archive filed suit against the FBI and on May 1, U.S. District Judge Louis Oberdorfer negotiated a stipulation between the two parties and the FBI agreed to process for release of some 3,000 pages of documents concerning the Library Awareness Program. Although there was much valuable information released through this stipulation, the material that was withheld was even more significant. In the meantime further FOIA requests are being submitted and court cases are still pending.

The FBI's domestic security investigations need reform in a number of reasons. First and foremost , FBI domestic security investigations need to be limited to only those groups or individuals who are clearly a threat to national security ie; use force or violence to achieve their goals. Priorities for this type of investigation are arbitrarily determined, rather than systematically. The Attorney General and the Congressional Oversight Committee should recommend to the President that the FBI discontinue its practice of domestic surveillance of subversive or radical groups who do not use or espouse the use of violence. Investigations of groups or individuals conducted on the basis of their political beliefs is by all means unconstitutional.

The General Accounting Office has recommended that the FBI limit their investigations to groups that have "proven abilities to commit violent acts and have been classified annually by the Attorney General as being grave threats to the public well being". (Comptroller, 10). The phrase"proven ability to commit violent acts" could be defined by frequency of acts and time period in which they were committed. The FBI believes that it should be allowed to investigate groups that evidence a possibility of violence, regardless of the probability that they will commit these acts.

Also in the realm of collecting and gathering information the FBI should be liable to remain under the Constitution. Techniques such as electronic surveillance, the use of mail covers (looking at envelopes to

determine addressees and addressers in order to develop intelligence regarding the organizational structures and membership of "revolutionary" groups), the use of mail openings, surreptitious entries, and access to federal income tax returns should all be guarded against. In these instances the FBI seemingly puts effectiveness over the civil liberties of individuals. These types of abuses put the FBI above the law and leave the individual with the burden of proof. T ese actions and attitudes contribute to an adversarial relationship between government and the people it has sworn to represent.

Conclusion

The loss of individual rights and public access to information which occurred under President Reagan during the 1980's has been highly detrimental to the civil liberties of American citizens. The result has been a weakening of the Constitution and the Bill of Rights and a strengthening of governmental powers to withhold information and pry into the private lives of the people. The vast majority of the decline of individual rights and loss of public access to information which took place in the 1980's has been untouched by the Bush administration in the early 1990's. It is a sad comment indeed on the state of our democracy in 1992, that the Constitutional rights which were guaranteed to every American over 200 years ago have been so rapidly diminishing and yet there is so little concern among the general public.

New blockades set up to discourage public access to information, and new policies which invade the privacy of individual citizens, are crucial steps in the decline of our constitutional rights. Free and uncensored access to government information is an essential ingredient to a democratic society. Only through this type of access can the citizens of a democracy make the educated judgements needed to improve and advance the society. A government which attempts to keep its actions secret from the people by hiding behind such ambiguous and broad terms such as national security, is a government which is not serving the interests of the people. Although there are certainly instances where national security must be invoked, the Reagan administration abused the term in an attempt to keep its true functionings hidden from the public whom it feared would be enraged at the truth. This was evidenced in the Iran-Contra scandal in which the public learned that the Reagan administration was running another, secret government outside of public scrutiny and unchecked by Congress. Here the government was serving its own interests. This type of government secrecy leads not only to a loss of individual rights, but also to a government that exists as an entity separate from the view of the people. Unchecked government of this kind is not the type of government envisioned in the Constitution as being of the people, for the people, and by the people. Rather the government loses its focus and begins to control the people, rather than the other way around. It is critical in a democratic society for the people to take an

active involvement in their governmental institutions to guard against this sort of abuse. If the people do not recieve enough of the valuable information necessary to make an informed decision, then active involvement seems, on the surface, to be unnecessary. In this manner the government has succeeded in disengaging the average person from the political process, by controlling what they can or cannot know regarding the workings of the government. This sort of tyrannical abuse of power must be guarded against and challenged at every level in order to help the people reclaim the government that once was theirs, but for now belongs to big money and powerful interests.

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